57TH CONGRESS, 1st Session. } HOUSE OF REPRESENTATIVES. { DOCUMENT No. 291.

SHIP GOVERNOR BOWDOIN.

LETTER FROM THE ASSISTANT CLERK OF THE COURT OF CLAIMS, TRANSMITTING A COPY OF THE CONCLUSIONS OF LAW AND FACT IN THE FRENCH SPOLIATION CASES RELATING TO THE SHIP GOVERNOR BOWDOIN AGAINST THE UNITED STATES.

JANUARY 21, 1902.—Referred to the Committee on Claims and ordered to be printed.

COURT OF CLAIMS,
Washington, D. C., January 21, 1902.

SIR: Pursuant to the order of the Court of Claims, I transmit herewith the conclusions of fact and of law and of the opinion of the court, under the act of January 20, 1885, in the French spoliation claims set out in the annexed findings by the court relating to the vessel ship *Governor Bowdoin*, Daniel Oliver, master.

Respectfully,

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

Hon. DAVID B. HENDERSON,
Speaker of the House of Representatives.

[Court of Claims. French spoliations. (Act of January 20, 1885; 23 Stat. L., 283.) (Decided May 6, 1901.) Ship *Governor Bowdoin*, Daniel Oliver, master.]

No. of Case.	Claimant.
362.	Charles F. Adams, administrator, etc., of Peter C. Brooks, *v.* The United States.
1010.	Robert Codman, administrator, etc., of William Gray, *v.* The United States.
2395.	Nathan Matthews, jr., administrator, etc., of Daniel Sargent, *v.* The United States.
3520.	Charles T. Lovering, administrator, etc., of Joseph Taylor, *v.* The United States.
3521.	Charles T. Lovering, administrator, etc., of Joseph Taylor, *v.* The United States.
3522.	Charles T. Lovering, administrator, etc., of Joseph Taylor, *v.* The United States.
3523.	Charles T. Lovering, administrator, etc., of Joseph Taylor, *v.* The United States.
3524.	Charles T. Lovering, administrator, etc., of Joseph Taylor, *v.* The United States.
3722.	H. H. Hunnewell, administrator, etc., of Arnold and Samuel Welles, *v.* The United States.
	H. H. Hunnewell, executor, etc., of John Welles.
	William P. Perkins, administrator, etc., of Thomas Perkins, *v.* The United States.
	Frederick R. Sears, administrator, etc., of David Sears, *v.* The United States.
	Henry B. Cabot, administrator, etc., of Jonathan Mason, jr., *v.* The United States.
4552.	Henry B. Cabot, administrator, etc., of Daniel D. Rogers, *v.* The United States.

PRELIMINARY STATEMENT.

These cases were tried before the Court of Claims on the 11th day of April, 1901. The claimants were represented by J. M. Wilson, William T. S. Curtis, Theodore J. Pickett, H. M. Earle, George S. Boutwell, and Edward Lander, esqs.; and the United States, defendant, by the Attorney-General, through his assistants in the Department of Justice, Charles W. Russell and John W. Trainor, esqs., with whom was Assistant Attorney-General Louis A. Pradt.

CONCLUSIONS OF FACT.

The court, upon the evidence and after hearing the arguments and considering same with the briefs of counsel on each side, determine the facts to be as follows:

I. The ship *Governor Bowdoin*, Daniel Oliver, master, sailed on a commercial voyage on or about July 13, 1797, from Batavia, Java, bound to Boston. While peacefully pursuing said voyage she was seized on the high seas by the French cruiser *Hirondelle* on or about September 1, 1797, and carried into the Isle of France, and there condemned by the tribunal of appeals, on appeal by the captors from the decision of the tribunal of commerce, which had released the vessel, whereby both vessel and cargo became a total loss to the owners thereof.

The grounds of condemnation, as set forth in the decree, were as follows, viz:

1. That there had been a contravention in the ship's passport in that one given by the President of the United States for a ship of 142 tons was found on board a vessel of 248 tons.

2. That the rôle d'équipage was not issued by the public officers of the port from which said vessel sailed.

3. That the neutral ownership of the cargo was not established by the bills of lading, invoice, and other papers found on board.

4. That the bill of lading and invoice of specie shipped at Boston for Batavia gives only a presumption and not legal proof of neutral ownership.

II. No appeal was taken by the master for the owners from the tribunal of appeals which condemned the vessel and cargo. Subsequent to the decree and an order depriving the master of the security of a bond from the captors, a declaration was made by the master that he had done everything in his power to obtain justice before the tribunal rendering the decree, before the colonial assembly, and the administrators, and, not having succeeded, there remained no other course than to appeal to the seat of government and demand from the tribunals of France that justice which had been cruelly refused him in one of her colonies. The evidence establishes no proceedings on appeal.

III. The *Governor Bowdoin* was a duly registered vessel of the United States, of $240\frac{12}{95}$ tons burden, built at Boston in 1790, and was owned in the proportions as here stated by the following persons, citizens of the United States and residents of Boston, viz: Arnold Welles, 12/80; Samuel Welles, 9/80; Jonathan Mason, jr., 23/240; John Welles, 23/240; David Sears, 17/80; Daniel D. Rogers, 7/80; Jonathan Chapman, 12/80, and Thomas Perkins, 23/240.

IV. The cargo of the *Governor Bowdoin* at the time of said seizure consisted of coffee and sugar, and was owned in the same proportion and by the same persons as the vessel. George Boyd, mate of the *Governor Bowdoin*, and William V. Hutchins, master mariner, of Gloucester, Mass., also had adventures on board said vessel, consisting of coffee, sugar, and arrack.

V. The losses by reason of the condemnation of the *Governor Bowdoin* and cargo were as follows:

Value of the vessel	$7,200.00
Value of the cargo	42,123.69
Freight earnings for the voyage	4,000.00
Adventure of George Boyd	1,798.00
Adventure of William V. Hutchins	1,320.00
Premiums of insurance paid	2,218.00
Amounting in all to	58,659.69

VI. Case No. 362. Said Daniel D. Rogers insured his interests in said vessel and cargo in the office of Peter C. Brooks, in the sum of $1,100, paying therefor a premium of 11 per cent by a policy dated December 13, 1796, underwritten by the following persons, citizens of the United States, in the sums set opposite their names, viz:

Stephen Gorham	$400.00
Daniel Sargent	700.00

August 14, 1798, said Peter C. Brooks, as agent, duly paid to said Daniel D. Rogers the sum of $1,100, as and for a total loss on said policy by reason of the premises.

Said Daniel D. Rogers further insured his interests in said vessel and cargo in the office of Peter C. Brooks, in the sum of $3,000, paying therefor a premium of 15 per cent, by a policy dated November 2, 1797, underwritten by the following persons, all of whom were citizens of the United States, in the amounts set opposite their names, viz:

Nathaniel Fellowes	$2,000.00
Samuel W. Pomeroy	1,000.00

August 14, 1798, said Peter C. Brooks, as agent, duly paid to said Daniel D. Rogers the sum of $3,000, as and for a total loss on said policy by reason of the premises.

November 21, 1801, Stephen Gorham, in consideration of $2,986.65, to him paid by Peter Chardon Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in said Brooks's office, assigned to the said Brooks all his right, title, and interest in and to all the insurance done by him as an underwriter in the office of the said Brooks.

September 2, 1805, Daniel Sargent, in consideration of $3,000 to him paid by Peter C. Brooks, and the assumption by the said Brooks of all and any liabilities and disadvantages arising from his underwriting in said Brooks's office, assigned to the said Brooks all his right, title, and interest in and to all insurance done by him as an underwriter in the office of the said Brooks.

Case No. 1010. Said John Welles insured his interests in said vessel and cargo in the office of Joseph Taylor in the sum of $2,500, paying therefor a premium of 15 per cent, by a policy dated January 17, 1798, underwritten by the following persons, citizens of the United States, in the sums set opposite their names, viz:

Wm. Gray	$2,000.00
John Duballet	500.00

August 14, 1798, said Joseph Taylor, as agent, paid to said John Welles the sum of $2,500, as and for a total loss on said policy by reason of the premises.

No person claiming to represent the estate of John Duballet has appeared.

Case No. 2395. Daniel Sargent and others insured said Jonathan Chapman on his interest in said vessel and cargo in the sum of $6,000, by a policy underwritten in the office of Joseph Taylor, and the said Taylor, as agent, afterwards paid the said Chapman the said amount of said policy, as and for a total loss by reason of the premises, as hereinafter more fully set forth under case No. 3524.

Case No. 3520. Said Jonathan Chapman insured his interest in said vessel and cargo in the office of Joseph Taylor in the sum of $1,200, paying therefor a premium of 12 per cent, by a policy dated February 8, 1797, said policy being under-written in the said sum by David Greene, a citizen of the United States.

July 16, 1798, said Taylor, as agent, duly paid to said Jonathan Chapman the sum of $1,200, as and for a total loss on said policy by reason of the premises.

Case No. 3521. Said John Boyd, a citizen of the United States, insured his adventure on said vessel in the office of Joseph Taylor in the sum of $900, paying therefor a premium of 11 per cent, by a policy dated December 14, 1796, said policy being underwritten in the said sum by Nicholas Gilman, a citizen of the United States.

October 24, 1798, said Taylor, as agent, duly paid to said Boyd the sum of $900, as and for a total loss on said policy by reason of the premises.

Case No. 3522. Said William V. Hutchins, a citizen of the United States, insured his adventure on said vessel in the office of Joseph Taylor in the sum of $1,500, paying therefor a premium of 15 per cent, by a policy dated January 9, 1798, underwritten by the following persons, citizens of the United States, in the sums set opposite their names, viz:

Benjamin Homer	$500.00
Nicholas Gilman	500.00
Arnold Welles, jr	500.00

July 16, 1798, said Joseph Taylor, as agent, duly paid to said William V. Hutchins the sum of $1,500, as and for a total loss on said policy by reason of the premises.

Case No. 3523. Said Thomas Perkins insured his interest in said vessel and cargo in the office of Joseph Taylor in the sum of $2,400, paying therefor a premium of 11 per cent, by a policy dated December 16, 1797, underwritten by the following persons, citizens of the United States, in the sums set opposit their names, viz:

William Lambert	$700.00
Benjamin C. Cutler	800.00
Daniel Gilman & Co	500.00
Caleb Hopkins	400.00

May 24, 1798, said Taylor, as agent, duly paid to said Thomas Perkins the sum of $2,448, being the face of said policy with an additional loss of 2 per cent, as and for a total loss on said policy by reason of the premises.

The firm of Daniel Gilman & Co. was composed of said Daniel Gilman and Nicholas Gilman, the last named being the survivor of the firm.

Case No. 3524. Said Jonathan Chapman further insured his interest in said vessel and cargo in the office of Joseph Taylor in the sum of $6,000, paying therefor a premium of 9 per cent, by a policy dated December 16, 1796, underwritten by the following persons, all of whom were citizens of the United States, in the sums set opposite their names, viz:

Caleb Hopkins	$1,000.00
James Scott	500.00
William Smith	500.00
Daniel Sargent	1,000.00
Thomas Cushing	500.00
William Foster	1,000.00
Nathan Bond	500.00
Wiliam H. Boardman	1,000.00

July 16, 1798, said Taylor, as agent, duly paid to said Chapman the sum of $6,000 as and for a total loss on said policy by reason of the premises.

William Gray reinsured said William H. Boardman on above policy, in the office of Joseph Taylor, by a policy dated February 2, 1798, in the sum of $1,000, and afterwards paid him that amount.

Case No. 3722. Thomas Perkins owned twenty-three two-hundred-and-fortieths of the vessel and cargo. His losses were as follows:

Twenty-three two-hundred-and-fortieths of the value of the vessel, cargo, and freight	$5,110.14
Premium of insurance paid	264.00
Amounting in all to	5,374.14
Deduct insurance received	2,448.00
Loss	2,926.14

Arnold Welles owned twelve-eightieths of vessel and cargo. His loss was as follows:

Twelve-eightieths of the value of vessel, cargo, and freight	$7,999.86

Samuel Welles owned nine-eightieths of vessel and cargo. His loss was as follows:

Nine-eightieths of the value of vessel, cargo, and freight	$5,999.22

Jonathan Mason, jr., owned twenty-three two-hundred-and-fortieths of vessel and cargo. His loss was as follows:

Twenty-three two-hundred-and-fortieths of the value of vessel, cargo, and freight	$5,110.14

John Welles owned twenty-three two-hundred-and-fortieths of vessel and cargo. His losses were as follows:

Twenty-three two-hundred-and-fortieths of the value of vessel, cargo, and freight	$5,110.14
Premium of insurance paid	375.00
Amounting in all to	5,485.14
Deduct insurance received	2,500.00
Loss	2,985.14

David Sears owned seventeen-eightieths of vessel and cargo. His loss was as follows:

Seventeen-eightieths of the value of vessel, cargo, and freight	$11,331.86

Jonathan Chapman owned twelve-eightieths of vessel and cargo. His losses were as follows:

Twelve-eightieths of the value of vessel, cargo, and freight	$7,999.86
Premium of insurance paid	684.00
Amounting in all to	8,683.86
Deduct insurance received	7,200.00
Loss	1,483.86

No person claiming to represent the estate of Jonathan Chapman has appeared.

Case No. 4552. Daniel Denison Rogers owned seven-eightieths of vessel and cargo. His losses were as follows:

Seven-eightieths of the value of vessel, cargo, and freight	$4,666.06
Premium of insurance paid	571.00
Amounting in all to	5,237.06
Deduct insurance received	4,100.00
Loss	1,137.06

VII. The claimants herein have produced letters of administration upon the estate of the parties for whom they appear, and have otherwise proved to the satisfaction of the court that the persons for whose estates they have filed claims are in fact the same persons who suffered loss by reason of the seizure and condemnation of the *Governor Bowdoin*, as set forth in the preceding findings.

Said claims were not embraced in the convention between the United States and the Republic of France concluded on the 30th of April, 1803. They were not claims growing out of the acts of France allowed and paid in whole or in part under the provisions of the treaty between the United States and Spain concluded on the 22d of February, 1819, and were not allowed in whole or in part under the provisions of the treaty between the United States and France on the 4th of July, 1831.

The claimants, in their representative capacity, are the owners of said claims, which have never been assigned except as aforesaid.

CONCLUSIONS OF LAW.

The court decides as conclusions of law that said seizure and condemnation were illegal and the owners and insurers had valid claims of indemnity therefor upon the French Government prior to the ratification of the convention between the United States and the French Republic, concluded on the 30th day of September, 1800; that said claims were relinquished to France by the Government of the United States by said treaty in part consideration of the relinquishment of certain national claims of France against the United States, and that the claimants are entitled to the following sums from the United States:

Charles F. Adams, administrator of Peter C. Brooks	$1,100.00
A. Lawrence Lowell, administrator of Nathaniel Fellowes	2,000.00
Frank Dabney, administrator of Samuel W. Pomeroy	1,000.00
David G. Haskins, administrator of David Greene	1,200.00
William G. Perry, executor of Nicholas Gilman	1,910.00
Arthur D. Hill, administrator of Benjamin Homer	500.00
H. Hollis Hunnewell, administrator of Arnold Welles, jr	500.00
John W. Athrop, administrator of Caleb Hopkins	1,408.00
George G. King, administrator of James Scott	500.00
William S. Carter, administrator of William Smith	500.00
H. Burr Crandall, administrator of Thomas Cushing	500.00
John W. Athrop, administrator of William Foster	1,000.00
Lawrence Bond, administrator of Nathan Bond	500.00
H. Hollis Hunnewell, administrator of Arnold Welles	7,999.86
H. Hollis Hunnewell, administrator of Samuel Welles	5,999.22
H. Hollis Hunnewell, executor of John Welles	2,985.14
William P. Perkins, executor of Thomas Perkins	2,926.14
Frederick R. Sears, administrator of David Sears	11,331.86
Henry B. Cabot, administrator of Jonathan Mason, jr	5,110.14
Nathan Matthews, jr., administrator of Daniel Sargent	1,000.00
Robert Codman, administrator of William Gray	3,000.00
Henry B. Cabot, administrator of Daniel D. Rogers	1,137.06
Total amount recoverable	54,107.42

HOWRY, J., delivered the opinion of the court:

The findings dispose of the suggested want of citizenship as to one of the original owners and determine as well the ultimate fate of the vessel and its cargo. The production by the claimants of certain papers on board the vessel at the time of the seizure and condemnation, and the memorandum relating to the future adjustment of the charge for general average and expenses attending the capture on settlement of the insurance, does not establish restitution. The sentence of condemnation antedated the treaty of September 30, 1800, and with nothing more tangible than a notice of a bare right to an appeal (which does not prove that such a step was actually taken, or that the proceedings were in abeyance until another treaty) the record is insufficient to justify the conclusion that the property was restored to its owners under the fourth article of the treaty of 1800, or otherwise, as the result of an appeal.

Open for consideration then is the legal effect of the decree as a definitive condemnation. Was it the duty of the owners, through the master as their agent, to exhaust their remedies in cassation so as to create a valid diplomatic claim against France?

The answer to the inquiry must be determined not merely upon the general rule that appeals should be taken from the inferior to the superior tribunal, where there are appellate courts open, but also by the terms imposed by the decree, the action taken under it, and the conditions surrounding the master after the sentence had become final as to the prize court.

It appears that the ship *Governor Bowdoin* sailed from Boston December 13, 1796, bound for Batavia. She arrived at Batavia May 30, 1797, where the master purchased a cargo of sugar and coffee and sailed for Boston. The vessel was captured September 1, 1797, by the French cruiser *Hirondelle* and carried into the Isle of France (Mauritius). The vessel and cargo were libeled before the tribunal of commerce of the Isle of France and released; an appeal was taken by the captors to the tribunal of appeals of Mauritius, which condemned the vessel and cargo January 4, 1798. The grounds of condemnation were: Error in the ship's passport; informality in the issuance of the rôle d'équipage; failure to establish neutral ownership of the cargo, and, finally, a presumption only and not legal proof of neutrality as to the $28,000 on board arising from the invoice and bill of lading. Under the decree the vessel and cargo were turned over to the captors. On January 17, 1798, the master of the ship applied to the court to compel the captors to give security for the vessel and cargo, as required by the French law. The application was denied. Following this was an act nonsuiting the master in his opposition, with an order that the decree be executed, under which the property was sold.

In the explanatory statement subsequently presented on behalf of the master to the prize court the illegality of the proceedings seem to us to be clearly shown. It was recited for the master that possession was ordered and the sale made without leaving to him any assumed recourse, even if he should prove in France the neutrality of his vessel and cargo. The statement concluded with the declaration that the master "having done everything in his power to obtain justice before the tribunal, before the colonial assembly, and the administrators, and not having succeeded, there remains no other course than to appeal to the seat of government, and demand from the tribunals of France that justice which has been cruelly refused him in one of her colonies." Here the history of the matter ends until, in the evolution of time, France being relieved in the meantime from liability by convention between the two countries, the claim for indemnity is presented to a court of the United States for adjudication.

In some respects the case resembles that of the *Federalist*, considered at this term and held not to present conditions which excused the claimants from taking an appeal. There the ship was condemned for carrying a cargo not deemed neutral. Here the neutral ownership of the cargo was pronounced insufficient. There the decree declared the ship's papers were irregular. Here, also, the decree recites irregularity in the passport and the rôle d'équipage. There, as here, no appeal was taken. But at this point the analogy ends. The prize court which condemned the *Federalist* sat in France. The tribunal which rendered the decree of condemnation in this case was distant from France about 9,000 miles. Cassation was at hand to afford speedy relief in the case heretofore considered. In the case now under consideration it was remotely distant. The remedy was reasonably certain for the one in the means taken to revise the decree of condemnation and to compel restitution if the appeal was successful. In this case a speedy hearing was not only improbable, but reparation made exceedingly uncertain by the means taken to make the judgment of the provincial court definitive. The case seems to be covered by the same state of affairs described by this court as applicable to hundreds of cases where substantial redress was within the reach of those claimants whose vessels had been condemned by prize courts sitting in France, but none existed for those whose vessels

were condemned in the West Indies or in some of the Spanish ports, where American shipmasters had been thrown into prison while the so-called prize proceedings passed to condemnation and sale, masters who were left penniless to find their way back as best they could after months of delay and who were not bound to sail around the world in search of an appellate jurisdiction in which they could seek restitution on behalf of vessel owners. (The ship *Tom*, 29 C. Cls. R., 68–89.)

Eliminating from consideration the fact that the master in this case was not thrown into prison—and the matter of distance, although he was 9,000 miles from France—yet he was deprived of everything he possessed, his vessel and cargo sold, and all his effects converted to the use of captors who did not in all probability return to France for years. The judgment was fully executed. The substantial remedy was gone when the application to the court for supersedeas or security of some kind from the captors was denied. Had the master proceeded to cassation in France his appeal promised no practical method of reaching the property seized. The appeal had nothing to operate upon. It is not a sufficient answer to say that the sale was void and that no title passed; that if the proceeds had been received by the captors they could have been compelled to disgorge. It was a part of the duty of the French Government to provide a remedy that would afford redress according to the usage and practice of courts meting out justice when the final judgment was pronounced.

Summarizing the defenses so earnestly brought to our attention, it is contended that the owners in some manner recovered back their vessel; that the claim was never presented to the State Department, and some of the original papers appear to be in the possession of the owners' descendants; that the insurers were bound to pay without awaiting the result of the litigation in France, and that the records of the French courts are lost or destroyed, which if existing might show that the vessel was subsequently released. It seems clear to us, however, that the vessel was sold under the decree of the tribunal of appeals in the Isle of France; that security was refused by the provincial prize court; that the insurers paid under their contract, and that if the vessel had been released she and the original papers should have gone to the possession of the insurers.

It is the opinion of the court that the claimants have made out their case and the contentions urged on behalf of the Government have failed to establish a defense.

The case will be so reported to Congress, together with a copy of this opinion.

BY THE COURT.

Filed May 6, 1901.
A true copy.
Teste this 21st day of January, 1902.
[SEAL.]

JOHN RANDOLPH,
Assistant Clerk Court of Claims.

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